IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR
ORDER

Jagdish Chandra **vs. Additional District Judge No.2, Bhilwara & Anr.**

(**S.B.Civil Writ Petition No.2129/06)**

Dated: 29.10.2007.

HON'BLE MR.JUSTICE SANGEET LODHA

Mr.Pankaj Sharma, for the petitioner.
Dr.Sachin Acharya, for the respondents.

BY THE COURT:-

This writ petition is directed against order dated 30.3.2005 passed by the learned Additional District Judge No.2, Bhilwara in appeal no. 2/2004 , whereby the appeal preferred by the defendant, petitioner herein, against an order dated 15.4.2004 passed by the Civil Judge(J.D.)(East), Bhilwara striking off his defence against eviction on the ground of default, in the suit preferred by the plaintiff-respondent, has been rejected.

The plaintiff-respondent preferred a suit against the defendant-petitioner for his eviction from the suit premises on the ground of default. During the pendency of the suit, the provisional rent was determined by the learned trial court in terms of the provisions of Section 13(3) of the Rajasthan Premises(Control of Rent and Eviction), Act, 1950 (in short "the Act of 1950" hereinafter). The provisional rent payable upto 30.6.2003 , determined vide order dated 8.7.2003 was

deposited by the defendant-petitioner on 19th July, 2003. The plaintiff-respondent filed an application stating therein that after depositing the provisional rent as aforesaid, the defendant has failed to deposit the rent month by month in terms of Section 13 (4) of the Act of 1950. It was stated that the defendant-petitioner has failed to deposit the rent for the months from July to September, therefore, his defence against eviction on the ground of the default deserves to be struck out.

A reply to the application was filed on behalf of the defendant-petitioner wherein inter alia it was stated that on account of his illness, he was not able to deposit the rent within time. It was prayed that delay in depositing the rent may be condoned.

After due consideration, the application preferred by the plaintiff-petitioner was rejected by the learned trial Court vide order dated 15.4.2004(Annexure 5) . The learned trial court arrived at the finding that provisions of Section 5 of the Limitation Act, 1953 cannot be invoked for condonation of delay in depositing the rent in terms of Section 13(4) of the Act of 1950. In this regard, the learned trial court relied upon the decisions of Hon'ble Supreme Court in Nassiruddin vs. Sitaram Agarwal, 2003 D.N.J.(SC), 180 and decision of this Court in the matter of Suraj Mal vs. Gambhir Mal, Civil Times (Raj.), 2003(2), 672. The learned Appellate Court affirmed the order passed by the trial court .

As per provisions of Section 13(4) of the Act of 1950 , the tenant is under an obligation to deposit in court or pay to the landlord the rent month by month subsequent to the period upto which determination has been made under Section 13(3) , by 15th of each succeeding month or within such further time, not exceeding 15 days as may be extended by the court, at monthly rate at which the rent was determined by the court under Section 13(3). Suffice it to say that on application being made on behalf of the tenant , the time for depositing the monthly rent can be extended by the trial court for a period not exceeding 15 days. Admittedly, the petitioner has not deposited the rent in terms of Section 13(4) for the months July to September within the period stipulated. Since, the provisions of Section 5 of Limitation Act cannot be invoked for condonation of delay in depositing the rent within the stipulated period or extended period, as the case may be, the learned trial Court has committed no error in rejecting the application preferred by the plaintiff-petitioner. For the parity of the reasons, the order passed by the learned Appellate Court also does not suffer from any infirmity or illegality.

In the result, the writ petition fails, it is hereby dismissed with no order as to costs.

(SANGEET LODHA),J.